



## **MEETING MINUTES**

### **MILPITAS PLANNING COMMISSION**

**Milpitas City Hall, Council Chambers  
455 E. Calaveras Blvd., Milpitas, CA**

**Wednesday, October 24, 2018**

#### **I. PLEDGE OF ALLEGIANCE**

**Vice Chair Ciardella** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

#### **II. ROLL CALL/ SEATING OF ALTERNATE**

**Present:** Vice Chair Ciardella, Commissioners Chua, Maglalang, Mohsin, Morris, Sandhu

**Absent:** Chair Mandal

**Staff:** Ned Thomas, Jessica Garner, Rozalynne Thompson, Avery Stark, Elizabeth Medina

#### **III. PUBLIC FORUM**

**Vice Chair Ciardella** invited members of the audience to address the commission and there were no speakers.

#### **IV. APPROVAL OF MEETING MINUTES**

**Vice Chair Ciardella** called for approval of the August 8, 2018 meeting minutes of the Planning Commission.

**Motion** to approve Planning Commission meeting minutes.

Motion/Second: Commissioner Mohsin/Vice Chair Ciardella

AYES: 4

NOES: 0

ABSTAIN: 2

**Vice Chair Ciardella** called for approval of the August 22, 2018 meeting minutes of the Planning Commission.

**Motion** to approve Planning Commission meeting minutes.

Motion/Second: Commissioner Mohsin/Commissioner Morris

AYES: 4

NOES: 0

ABSTAIN: 2

#### **V. ANNOUNCEMENTS**

**Planning Director Ned Thomas** provided departmental updates to the commission regarding:

- The General Plan and Midtown Specific Plan updates
- The Core project on Main Street approved by City Council

- Appeal of Tarob Court
- Election Day is November 6<sup>th</sup>
- Increase of compensation of Planning Commissioners
- Short Term Rentals and ADUs

Commission Maglalang requested to have a report the next meeting for developments that include the 5% affordable housing units.

Vice Chair Ciardella asked Planning Direction about updates to the Planning Commissioners handbook. It is a priority of Mr. Thomas to review to by-laws and Planning Commissioners handbook.

## **VI. CONFLICT OF INTEREST**

**Deputy City Attorney Heather Lee** asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.

There were no reported conflicts.

## **VII. APPROVAL OF AGENDA**

**Vice Chair Ciardella** asked if staff or Commissioners had changes to the agenda and there were none.

**Motion** to approve the October 24, 2018 agenda as submitted.

Motion/Second: Commissioner Sandhu/Commissioner Mohsin

AYES: 6

NOES: 0

## **VIII. PUBLIC HEARING**

**VIII-1 TENTATIVE PARCEL MAP – 533-565 E CAPITOL EXPRESSWAY, 606-648 MONTAGUE EXPRESSWAY, 700 MONTAGUE EXPRESSWAY, 1735-1743 S MILPITAS BLVD, 1490, 1498, 1535 GLADDING COURT - P-MT18-0001:** A request for a Tentative Parcel Map to create three new parcels, two designated remainders and two public roadway conveyances for the Milpitas Transit Center.

Project Planners Lillian Hua and Avery Stark showed a presentation and discussed the project.

Commissioner Morris asked Vice Chair if Applicant could come to the podium to speak about the project.

John Marzuni from BKF Engineers, consultant/representative of VTA shared details of the project, his contributions, and details of the request of the tentative parcel map.

Commissioner Maglalang asked Mr. Marzuni what is the plan for Parcel #3 and #4; what would it be used for. Mr. Marzuni noted that Parcel #3 would be used for a joint development project and Parcel #4 would be available in the event a request for another joint development was presented in the future.

Vice Chair Ciardella opened the public hearing and there were no speakers.

**Motion** to close the public hearing.

Motion/Second: Commissioner Chua/Commissioner Sandhu

AYES: 6

NOES: 0

**Motion to Adopt Resolution No. 18-016 approving the above application, subject to the Conditions of Approval.**

Motion/Second: Commissioner Sandhu/Commissioner Chua

AYES: 6

NOES: 0

## **VIII-2**

**ZONING TEXT AMENDMENT – MEDICAL AND ADULT USE CANNABIS REGULATIONS – CITYWIDE – P-ZA18-0002:** Consider and adopt a resolution recommending that the City Council adopt a City-initiated Zoning Ordinance Text Amendment to add provisions for the regulation of commercial cannabis activities and the cultivation of cannabis for personal use. The proposed regulations would allow medical and adult-use cannabis retail activities, subject to regulation, and prohibit all other commercial cannabis activities. The proposed provisions would regulate indoor cultivation of cannabis for personal use and prohibit outdoor cultivation of cannabis.

Project Planner Rozalynne Thompson and Avery Stark showed a presentation and discussed the project.

Commissioner Sandhu requested an explanation on how Resolution No. 18-019 is drafted, referencing the “with /without (circle one)” language. Ms. Thompson said that it was written in a way that would give the Planning Commission options to approve Recommendation as is or to approve the Recommendation to include / exclude options.

Vice Chair Ciardella asked if there was an age limit to purchase cannabis. Ms. Thompson referenced the MAUCRSA (Medicinal and Adult-Use Cannabis Regulation and Safety Act), where you must be 21+ to purchase for recreational use or for medicinal use, one must be 18+ with a prescription. Mr. Ciardella expressed concerns about youth obtaining imitation medicinal cards and being able to purchase marijuana. Ms. Thompson noted that the regulatory ordinance of cannabis in the City of Milpitas will be discussed and decided on by the Council and then reminded the entire Commission that only the land use and zoning portion of cannabis was being decided on in this evening’s meeting. MPD Captain Moscuzza addressed Mr. Ciardella’s concerns regarding fraudulent medicinal cards and how PD gets involved. Mr. Ciardella asked if there would be training for cannabis vendors. Captain Moscuzza noted there will be a training component within the regulatory ordinance.

Commissioner Morris asked for explanation of the (6) marijuana plants being grown in a home and if zoning applied to that. Ms. Thompson noted that under the MAUCRSA, it allows personal cultivation in the home/residence. Ms. Morris inquired about the results/feedback from community outreach surveys in regards to cannabis. Ms. Thompson said that survey was conducted by Parks and Recreation

and she only received general information of the City receiving 569 responses regarding various topics. Ms. Morris asked for clarification of “store front” vs “non-store front” retailers. Ms. Thompson explained that “store front” is a walk in store; whereas “non-store front” is not open to public, does not solicit walk in traffic, and only engage in delivery only.

Commissioner Mohsin asked how the six marijuana plants per residence would be regulated. Ms. Thompson noted that the six marijuana plants per residence is State law. Ms. Thompson also clarified that the up to six plant limitation is not per person, it is per residence. Captain Moscuza stated that the police or code enforcement would have to receive complaints in order to see if a residence has more than six plants. Ms. Mohsin asked if the Planning Commission would be able to approve store front use, non-store front in the indicated zones. Ms. Thompson noted that the Resolution that is presented to the Planning Commission is what the Planning Department and Cannabis Subcommittee are recommending and the Planning Commission may also recommend what they would like to be presented to Council.

Commissioner Maglalang asked what was Staff’s recommendation on the feet away from schools and day cares. Ms. Thompson responded that Staff’s recommendation is what the Subcommittee and Council has recommended to Planning Staff. Ms. Thompson also clarified State buffer laws for Ms. Maglalang. Although Zoning and Land Use is the purpose of this evening’s meeting topic, Captain Moscuza addressed Mr. Maglalang’s concerns regarding the six plant per residence concern. Captain Moscuza also shared DUI statistics with Mr. Maglalang.

Commissioner Chua asked Captain Moscuza for statistics of marijuana related crimes in the City in 2018. Captain Moscuza did not have those statistics readily available for the Commissioners but he said there are marijuana related crimes occurring, such as illegal growth, carrying an amount more than legal limits, etc. Ms. Chua asked if the police department had statistics of marijuana related crimes for neighboring cities. Captain Moscuza shared some of San Jose’s concerns with marijuana since adopting a cannabis ordinance for medical marijuana use/sales. If an ordinance is approved by the City, Ms. Chua asked if there will be more law enforcement hired. Captain Moscuza said that if approved, there will be an impact city wide and then is when the City will evaluate if more staffing is needed. Ms. Chua asked Ms. Thompson if she knows of neighboring cities that have adopted an ordinance for both medical and recreational use. Ms. Thompson is not aware of any in the area. Ms. Chua asked for clarification of recommendation of Staff versus State law. Assistant City Manager, Ashwini Kantak shared information about cities close to Milpitas with cannabis. Ms. Kantak also noted January 17, 2019 is the date the City has to either instill local regulations or ban marijuana. Ms. Chua said that one option was missing; the option to ban cannabis in the City. Ms. Kantak noted that only the recommendation from the Subcommittee is being presented to them and that a new ordinance would be needed to ban cannabis.

Commissioner Morris asked how much revenue would the City receive. Ms. Kantak then shared fiscal implications with the commissioners (i.e. cost recovery fees, application fees, permit fees, cannabis tax).

Vice Chair Ciardella asked if the City decided to allow cannabis use, cultivation and sales, could we tax commercial growers. Ms. Kantak said we may have to wait for the 2020 ballot, but it is something the City can do.

Commissioner Maglalang inquired if the schools are aware of the 600 foot buffers. Ms. Thompson notes that is a State law and that this evening's meeting was dually noticed citywide, which includes the School District. Mr. Maglalang asked how would income be generated if there is no tax on cannabis. Ms. Kantak said that income would be made by sales tax and applicant evaluation criteria. Ms. Kantak also said that it is not a huge income generator. Mr. Maglalang asked what would be the community benefit then. Ms. Kantak said community benefit would be evaluated during the application process, when the applicant is scored. Mr. Maglalang said allowing cannabis in the City would cause neighbor/community dispute. Ms. Kantak reminded Mr. Maglalang that this evening we are asking for the Commission's recommendation on commercial sales and test labs.

Vice Chair Ciardella opened the public hearing.

Assistant Superintendent of Human Relations Jonathan Brunson, speaking on behalf of the School District stated that marijuana is a gateway drug. He also stated that it would have a negative impact on the message they trying to send to the students of having healthy lives and being in safe neighborhoods in Milpitas. Mr. Ciardella asked Mr. Brunson if the 600 foot is enough. Mr. Brunson said that students travel over 600 feet to get to school, the City is covered in 13 miles, any feet in the City would not be good for the students. Lastly he said that the District does see cannabis as an impact to the safety of students and adults.

Sean Cali Ry, President/Founder of Silicon Valley Cannabis Alliance stated that cannabis is in Milpitas now. He said not to fool ourselves and fall into the fear that. Mr. Cali Ry stated that addiction is the problem, not cannabis.

**Motion** to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Morris

AYES: 6

NOES: 0

Vice Chair Ciardella asked for City Attorney to help the commissioners understand the options of the Resolution presented.

Commissioner Morris stated that she would like it in a industrial area, not in a commercial area and no store fronts; however, is okay with cannabis in Milpitas but in a designated area, in the industrial zone.

Commissioner Sandhu asked for clarification of the deadline dates. Assistant City Manager Kantak explained how the moratorium that is currently in place can no longer be extended.

Commissioner Maglalang is unhappy with the thought of cannabis being brought to the City.

Vice Chair Ciardella stated that is legal in California and can be bought in neighboring cities and hopefully not be used in Milpitas.

Senior Planner Rozalynne asked for a clarification of Ms. Morris' recommendation of no store front retail in industrial zones.

Planning Director Thomas reminded the Commissioners that testing labs is also an option to consider in their recommendations. Ms. Morris said that is something she would also consider as long as it is in a industrial area. Vice Chair Ciardella asked if that is something they can recommend as an option. Mr. Thomas said that is correct.

Mr. Thomas also clarifies their two recommendations: 1) various option recommendations from the Staff as it is presented tonight, and 2) allow non-storefront retail and testing labs in the industrial areas, to excluded store front retail.

Vice Chair Ciardella stated that, just like alcohol, you would have be 21 years old to purchase cannabis. Ms. Morris said that Mipitas should offer some middle ground. Mr. Ciardella then asked Captain Moscuzza if it would be harder to regulate cannabis if only in the industrial zones. Captain Moscuzza said he cannot see an advantage or disadvantage in terms of regulation whether in commercial or industrial.

Commissioner Chua speaks of her concerns: no crime statistics, no taxes, the schools. Ms. Chua does not understand why we cannot just continue to ban cannabis in the City. But to consider Ms. Morris' recommendation, she does not like the thought testing labs in Milpitas, and would like to recommend to limit the number of cannabis establishments to four. Ms. Thompson clarified Ms. Chua's recommendation of up to hour non-storefront establishments in the industrial zones, no testing labs. Attorney Heather Lee said that limiting the number of establishments would be regulatory and we are considering land use/zoning in this meeting.

Vice Ciardella asked the Commissioners to open the public hearing.

**Motion** to open the public hearing.

Motion/Second: Commissioner Chua/Vice Chair Ciardella

AYES: 6

NOES: 0

Charum, from the medical field stated that after listening to the discussion she now better understands the recommendation. She spoke to how this evening's meeting seems to have concern for retail, but to please consider the patients who would need medical marijuana. Ms. Charum mentioned how some patients are wheelchair bound and need to ask family to get the medical marijuana they need. In closing, Ms. Charum states that medical marijuana is necessary for medical patiens of the City of Milpitas.

**Motion** to close the public hearing.

Motion/Second: Commissioner Maglalang/Commissioner Chua

AYES: 6

NOES: 0

Mr. Thomas again clarified tonight's recommendation options: 1) allow non-store front retail and testing labs in the industrial areas, to excluded store front retail, 2) continue the moratorium/complete ban of cannabis related uses, 3) allow non-store

front retail in the industrial areas, to excluded store front retail, no testing labs and limit the number of facilities. Ms. Chua stated that it is: allow non-store front retail and testing labs in the industrial areas, to excluded store front retail, and limit the number of facilities for medical and adult use; with a recommendation to Council of a cannabis tax be considered for 2020 ballot. Attorney Lee said that limitation of facilities can be attached as a comment; and the cannabis tax is a regulatory item not land use/zoning item.

Planning Director explained with the changes of recommendation that the Staff would write a report of tonight's meeting and provide a summary to the Council.

Commissioner Maglalang asked about the 600 foot (K-12 schools) and 200 foot (daycare/youth center) buffers. Mr. Thomas and Ms. Thompson explained that these buffers will still apply in industrial zones.

Commissioner Mohsin said that marijuana would be able to be ordered, as she orders her prescriptions from Kaiser; order and it gets delivered. This is something she is okay with.

Commissioner Chua questioned the buffer distance and State buffer regulation. Ms. Thompson noted that it is 600 feet for K-12 schools and 200 feet for daycares/youth centers. Ms. Chua then said she would like to see a 600 foot buffer for both schools and daycare/youth centers.

**Motion** to Consider and adopt a Resolution ZONING TEXT AMENDMENT – MEDICAL AND ADULT USE CANNABIS REGULATIONS – CITYWIDE – P-ZA18-0002: Consider and adopt a resolution recommending that the City Council adopt a City-initiated Zoning Ordinance Text Amendment to add provisions for the regulation of commercial cannabis activities and the cultivation of cannabis for personal use to limit to no testing, non store front in industrial areas with a 600 foot buffer for both K-12 schools and daycares/youth centers. With Council's later consideration to limit number of establishments and considering a cannabis tax.

Motion/Second: Commissioner Chua/Commissioner Morris

AYES: 4

NOES: 2 (Sandhu/Ciardella)

## **IX. NEW BUSINESS**

### **NO ITEMS**

## **X. ADJOURNMENT**

The meeting was adjourned at 9:04 PM.

**Motion** to adjourn to the next meeting.

Motion/Second: Commissioner Sandhu/Commissioner Morris

AYES: 6

NOES: 0

*Meeting Minutes submitted by  
Planning Commission Secretary Elizabeth Medina*

